

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Pimmit Branch		Docket No. A2011-90
Falls Church, VA 22043		

REPLY BRIEF OF PETITIONER ELAINE J. MITTLEMAN

(December 22, 2011)

Respectfully submitted,

/s/ Elaine J. Mittleman

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Petitioner Elaine J. Mittleman respectfully submits this Reply Brief. The Comments of the United States Postal Service, filed on November 21, 2011, and the Supplemental Comments, filed on December 16, 2011, primarily consist of the generic statements used in most final determinations. The conclusory statements, in conjunction with a lack of accurate factual support, indicate that a remand is necessary.

MORATORIUM ON CLOSINGS

On December 13, 2011, the Postal Service announced that it had agreed to delay the closing or consolidation of any Post Office or mail processing facility until May 15, 2012. *See* Postal News press release, dated December 13, 2011 (attached hereto). This release stated that “Given the Postal Service’s financial situation and the loss of mail volume, the Postal Service must continue to take all steps necessary to reduce costs and increase revenue.”

The moratorium places those whose appeals are pending in an unfair position. Chairman Goldway has stated in a dissenting opinion that:

It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process but had not yet received a discontinuance notice by December 12, 2011 have the respite of a five month moratorium.

See Docket No. A2011-55, Fishers Landing Post Office, Fishers Landing, New York, Order No. 1052, Order Affirming Determination, December 16, 2011, Dissenting Opinion of Chairman Goldway.

Further, the Postal Service violated 39 U.S.C. § 404 (d)(4) in closing the Pimmit Branch. The notice of closing was by letter dated September 14, 2011. The Pimmit Branch closed on November 10, 2011, which was fewer than the required 60 days after the notice was posted. If the Postal Service had complied with this 60-day requirement, then the impending moratorium may have prevented its closing.

DUTY OF PUBLIC REPRESENTATIVES

A Public Representative is appointed for each appeal of a post office closing. *See* 39 U.S.C. § 505, which provides that “The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings (such as developing rules, regulations, and procedures) who shall represent the interests of the general public.” The role of the officer is shown in the chart (attached hereto) of the Postal Regulatory Commission Organization.

On December 20, 2011, Petitioner Mittleman learned that the Public Representative assigned to this appeal has moved to a different position and is no longer working on this appeal. The Public Representative did not advise Petitioner that he had moved. In a conversation on December 21, 2011, with an official of

the Commission, Petitioner Mittleman was advised that no replacement Public Representative would be designated.

Thus, it appears that there will be no Public Representative fulfill the statutory duty to "represent the interests of the general public." The lack of a Public Representative is particularly problematic in this appeal, which presents significant issues facing a community in a major metropolitan area. The Commission should ensure that the requirements of 39 U.S.C. § 505 are met.

STAMPS ON CONSIGNMENT LOCATIONS

In the United States Postal Service Response to Order No. 1005, dated December 2, 2011, the Postal Service stated at p. 3 that "the updated list includes at least three Stamps on Consignment locations that are located within 1.2 miles of Pimmit Branch." However, the Postal Service fails to note that having three facilities within 1.2 miles is wholly inadequate. One of the categories for Docket No. N2011-1: Retail Access Optimization and Consolidation Initiative (RAOI) is retail annexes that had FY 2010 revenue of less than \$1 million and are located within a half-mile of at least five postal retail and/or alternate access sites.

The only Stamps on Consignment location that is less than one mile from the Pimmit Branch is the Whole Foods Market. Thus, using the categories in the RAOI, there are inadequate alternate access sites within a convenient location to

the Pimmit Branch. Further, a location that simply sells stamps fails to provide many of the necessary service of a postal facility, such as handling packages.

The recitation in the Supplemental Comments at p. 9 of “convenient options,” such as buying stamps online, provides no support for a claim that the Pimmit Branch is not needed. Those options may in fact be helpful for the purposes for which they were designed.

However, the fact that those options exist does not negate the need to go to the post office for assistance. The Pimmit Branch had a very profitable operation. Customers could have used those options before the Pimmit Branch was closed to avoid a trip to the Pimmit Branch. They chose to go to the Pimmit Branch to conduct their important postal business. It is patronizing of the Postal Service to imply that customers will really be better off if they only do what the Postal Service wants by using other options. The customers made informed consumer choices to go to the Pimmit Branch. Taking that choice away from customers violates the obligation of the Postal Service to provide effective and regular service.

The Final Determination shows that there clearly are not adequate and convenient alternate access sites for the Pimmit Branch.

FAILURE OF THE POSTAL SERVICE TO OPERATE EFFICIENTLY

The Postal Service stated in its Comments filed on November 21, 2011, at p. 7 that the Postal Service is looking at all opportunities to operate efficiently and provide effective and regular service. This statement is contradicted by the record and decision-making concerning the Pimmit Branch. The decision to close the Pimmit Branch was Part of the DAR Justification for Falls Church Main Office Project. See Post Office Closing Proposal Fact Sheet, Admin. Record, Item No. 8 (attached hereto).

The Falls Church Main Office Project involved moving the retail facilities to a new office building at 800 W. Broad Street in Falls Church. The lease at 800 W. Broad Street, Suite 100, Falls Church, 22046, became effective on April 1, 2009. It has an expiration date of March 31, 2024. The annual rent for 800 W. Broad Street is \$234,000. The obligation to the Postal Service for the fifteen-year lease at 800 W. Broad Street appears to be \$3,510,000 [15 x \$234,000].

It is obvious that closing a very profitable and convenient branch as part of the DAR justification to commit to a \$3.5 million lease obligation in an office building is not a wise financial or operational decision. Even though the Postal Service is suffering severe financial strain, it took on an expensive project. The Administrative Record in this appeal does not include the DAR Justification. This matter should be remanded to permit the Postal Service to explain how closing the

Pimmit Branch to permit the new lease obligation at 800 W. Broad Street is an efficient financial decision. The Postal Service also should explain how closing a profitable branch contributes to providing effective and regular service.

EFFECT ON REVENUE OF CLOSING PIMMIT BRANCH

As the Postal Service noted in its December 13, 2011 press release, in light of its financial situation and the loss of mail volume, the Postal Service must take all steps necessary to increase revenue. However, in spite of the need to increase revenue, the Postal Service is not including revenue calculations or discussions in its final determinations. The decision-making process by the Postal Service for closings is fundamentally flawed by its omission of any analysis of revenues.

THE POSTAL SERVICE PREJUDGED THE FINAL DETERMINATION TO CLOSE THE PIMMIT BRANCH

The Postal Service had already decided to close the Pimmit Branch before it conducted the discontinuance process. The Post Office Closing Proposal Fact Sheet is dated November 20, 2009. It states that the reason for the proposal to discontinue is "Part of DAR Justification for Falls Church Main Office project." The Proposal to Close the Pimmit Branch states that "The DAR for the Falls Church Finance Unit indicated the Pimmit Branch would be closed." Admin. Record, Item No. 22, p. 6 (attached hereto).

The Commission has judged addressed the question of prejudging a final determination, as follows: "From the Administrative Record, it appears that the

decision to consolidate the Watson post office into the Brookside CPO was made prior to solicitation of public input concerning the proposal. í The resulting appearance of prejudgment of the determination to close the Watson post office undermines the public's confidence in the section 404(d) process. For the foregoing reasons, the Postal Service has failed to comply with the procedural requirements of section 404(d).ö See Docket No. A2011-56, Watson Post Office, Watson, Alabama, Order No. 1061, Order Remanding Determination, December 21, 2011, at 13.

This holding applies to the decision to close the Pimmit Branch. The Proposal to Close the Pimmit Branch states that öThe DAR for the Falls Church Finance Unit indicated the Pimmit Branch would be closed.ö The decision had already been made to close the Pimmit Branch when the DAR analysis was conducted for the lease at 800 W. Broad Street. The Postal Service simply went through the motions to make it appear that the question of closing the Pimmit Branch had not yet been decided. The Postal Service clearly violated the procedural requirements of 39 U.S.C. § 404 (d).

THE POSTAL SERVICE DOES NOT ACCURATELY DETERMINE COST SAVINGS

The Postal Service addressed the question of whether the cost savings are accurate, as follows: öThe responsible personnel are well versed in the costs of replacement service and relied upon their experience to make the calculation that

appears in the FD. The Postal Service has every reason to believe that the calculation in the record is reasonably accurate.ö Supplemental Comments at pp. 11-12.

This statement obviously lacks any factual support for an assertion that öthe calculation in the record is reasonably accurate.ö Perhaps even more troubling is the bald assertion that the Postal Service öhas every reason to believeö that the calculation is reasonably accurate.

The Orders of the Commission have contained numerous comments about the lack of proper calculations of cost savings. In one recent case, the Commission stated that ö[t]here appear to be inconsistent statements regarding the economic savings to the Postal Service in the Administrative Record.ö *See* Docket No. A2011-48, *Ida Post Office, Ida Arkansas*, Order No. 1028, Order Affirming Determination, December 7, 2011, at 11. The Dissenting Opinion by Chairman Goldway and Commissioner Langley noted that ö[t]he financial analysis contained in the Postal Service's final determination is seriously flawed. It misstates the record in several places, particularly, with regard to savings related to the existing lease.ö The Postal Service cannot justify that a calculation is accurate because it has every reason to believe it is accurate.

Moreover, the shortcomings in cost savings calculations have occurred in several categories, including employee costs and lease payments. The Commission

emphasized that it “has stated on numerous occasions that the Postal Service should not compute savings based on compensation costs that are not eliminated by the discontinuance of an office. *See* Docket No. A2011-23, Rosser Post Office, Rosser, Texas, Order No. 950, Order Affirming Determination, November 4, 2011, at 9.

Commissioner Langley recently explained that the “Postal Service should note that any savings from the lease will not be realized for over six years. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable costs savings and does not overstate savings. I find that the Postal Service’s decision to discontinue operations at the Fishers Landing post office is unsupported by evidence on the record and thus, should be remanded.” *See* Docket No. A2011-55, Fishers Landing Post Office, Fishers Landing, New York, Order No. 1052, Order Affirming Determination, December 16, 2011, Dissenting Opinion of Commissioner Langley.

In another case Commissioner Langley emphasized, “as I have stated previously in past opinions, the Postal Service did not present a fully balanced cost/benefit analysis for closing this location.” *See* Docket No. A2011-49, Village Station, Pinehurst, North Carolina, Order No. 1037, Order Affirming Determination, December 12, 2011, Concurring Opinion of Commissioner Langley.

Chairman Goldway has emphasized in dissenting opinions that “It is not the statutory responsibility of the Postal Regulatory Commission to correct the record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.” See Docket No. A2011-55, Fishers Landing Post Office, Fishers Landing, New York, Order No. 1052, Order Affirming Determination, December 16, 2011, Dissenting Opinion of Chairman Goldway; Docket No. A2011-57, Ottosen Post Office, Ottosen, Iowa, Order No. 1055, Order Affirming Determination, December 19, 2011, Dissenting Opinion of Chairman Goldway. In a concurring opinion in Docket No. A2011-56, Watson Post Office, Watson, Alabama, Order No. 1061, Order Remanding Determination, December 21, 2011, Chairman Goldway reiterated this comment.

In the Pinehurst, North Carolina, appeal, Chairman Goldway said “In my opinion, the savings estimate is not supported by the record.” See Docket No. A2011-49, Village Station, Pinehurst, North Carolina, Order No. 1037, Order Affirming Determination, December 12, 2011, Dissenting Opinion of Chairman Goldway at 4.

POSTAL BULLETIN ENTRY FOR PIMMIT CHANGE IS INCORRECT

The Postal Service stated in its Supplemental Comments at p. 2 that the discontinuance was published in the Postal Bulletin, an excerpt of which was included as Exhibit 1 to the Supplemental Comments. The entry for the Pimmit Branch indicates that the Old Unit is Pimmit and the Unit Type is Classified Branch. The New Unit is described as Main Office and the Unit Type is Post Office.

This entry is not correct. The Pimmit Branch business is being moved to the Finance Station at 800 W. Broad Street. That is not the Falls Church Main Post Office. The facility located at 301 W. Broad Street is the Falls Church Main Post Office, even though it does not have a retail facility. Thus, the entry in the Postal Bulletin is not accurate. The Falls Church Main Post Office will not be taking on the retail and box operations of the Pimmit Branch.

Moreover, the Falls Church Main Post Office is scheduled to be moved to Merrifield, Virginia. When that occurs, there apparently will not be a Main Post Office located in Falls Church. The relocation of the business from the Pimmit Branch to the Finance Station is further complicated by the relocation of the Falls Church Main Post Office and carrier operation to Merrifield.

For the foregoing reasons, the Postal Service's determination to close the Pimmit Branch should be remanded for further consideration.